

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7808 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

MUKESH J SHAH

Versus

COMPETENT AUTHORITY AND ADDITIONAL COLLECTOR

Appearance:

MR MJ THAKORE with MR DM PARIKH for Petitioner
MR TH SOMPAURA, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/07/98

ORAL JUDGEMENT

This petition under Article 226 of the Constitution challenges the order dated 25.6.1995 passed by the Urban Land Tribunal in Appeal No. Vadodara-18/95 confirming the order dated 1.6.1995 passed by the Competent Authority and Additional Collector, Vadodara cancelling the exemption under Section 21(1) of the Urban Land (Ceiling & Regulations) Act, 1976 (hereinafter referred to as "the Act"). The petition also challenges consequential order dated 1.6.1995 passed by the Competent Authority directing the petitioner to maintain status quo with respect to the lands in question with a

further prayer to direct the Competent Authority to extend the period for completion of construction by the petitioner.

2. The facts leading to filing of the petition are as under :-

2.1 The lands bearing Survey 924, 925 Part and 925 B admeasuring in aggregate 1,35,773 Sq.Mtrs. in village Gotri of Baroda Urban Agglomeration were owned by E. F. Deboo who filed Form No. I under Section 6 of the Act in the year 1976. He also filed an application on 30-31.3.1979 under Section 21(1) of the Act for exemption of the aforesaid lands from operation of Chapter III of the Act for the purpose of constructing dwelling units for weaker sections of the society. The Competent Authority sanctioned the scheme under Section 21 of the Act on the terms and conditions mentioned in the order dated 16.4.1990 which is produced at Annexure "D" to the petition. That order exempted lands admeasuring 1,07,456.45 Sq.Mtrs. In the meantime, the original owner - E.F. Deboo expired and, therefore, by virtue of the Will executed by the original owner, the petitioner became the owner of the lands in question.

2.2 Some of the conditions of the said exemption order dated 16.4.1990 (Annexure "D") are as under :-

1(a) The construction of the dwelling units as per the scheme shall be commenced within one year from the date of the scheme and the construction shall be completed within five years thereof. In case the construction is not commenced within one year or not completed within five years and if the landholder is not able to satisfy the authority that the delay was for reasons beyond the his control, the scheme shall be cancelled after expiry of time limit for commencement of construction or the time limit for completion of the construction.

1(b) The dwelling units shall be sold to weaker sections of the society at the price determined by the authority and persons belonging to weaker sections of the society shall be entitled to purchase the dwelling units at such price. The dwelling units shall be sold through the Competent Authority and Additional Collector/Deputy Collector at the price and in accordance with the terms and conditions stipulated by the Government or by agency

nominated by the Government.

4. The landholder shall get the scheme published in at least one newspaper being published from Baroda with details about the broad features of the scheme, location, plinth area and the price of the dwelling units in each category and that the persons desirous of applying for such dwelling units shall apply within 45 days from the date of the advertisement.

Condition Nos. 5, 6 and 7 stipulated the eligibility criteria including income criteria. Condition No. 8 provided that before commencing construction the landholder shall obtain the necessary permission from the Municipal Corporation, Collector, Development Authority and all such authorities under the relevant applicable laws. Condition No. 9 required the landlord to commence construction within one year from the date of the sanction of the scheme and the landholder shall inform the Competent Authority and specified authority about such commencement and shall forward the progress report to the above authorities on the first and the 16th day of each month. Condition No. 11 provided that after completion of the construction, the landholder shall obtain certificate from the designated officer about completion of construction and occupancy certificate from the Competent Authority.

2.3 The petitioner applied for N.A. permission which was granted by the Collector on 8.10.1990. It appears that thereafter on 1.7.1991 by order at Annexure "F" the Competent Authority made certain modifications in the original scheme sanctioned on 16.4.1990. The petitioner applied to the Baroda Municipal Corporation for building permission. The Corporation granted the building permission to construct as per the plans sanctioned under the Town Planning Act by its communication dated 24.7.1991 at Annexure "G" to the petition. According to the petitioner, the petitioner commenced construction on the basis of the aforesaid building permission granted by the Baroda Municipal Corporation.

2.4 However, by letter dated 2.1.1993 (Annexure "I"), the Corporation through its Town Development Officer injuncted the petitioner from proceeding with the construction on the aforesaid lands because the Corporation was to undertake the work of detailing location of 30 Mtrs. wide VUDA road and that until the above line for the 30 Mtrs. VUDA road was finalized, the petitioner was directed not to put up construction on the

land in question. In view of the above communication, the petitioner had no alternative but to stop construction. After waiting for considerable time the petitioner addressed a representation dated 19.2.1994 (Annexure "J") requesting the authority to finalize location of the 30 Mtrs. wide road so that the petitioner can proceed with the construction as the petitioner had to comply with the dead line of completion of construction within 5 years from the date of sanction of the scheme. The petitioner requested for early detailing of the road in question so that the petitioner can get the new plans prepared by his Architect. Similarly representations were sent by the petitioner on 22.4.1994 and 25.8.1994 (Annexure "K" colly.).

2.5 On 18.9.1994 (Annexure "L") the Town Development Officer of the Corporation informed the petitioner that the VUDA had undertaken the work of making variations in the development plan and that after finalization of the plan by VUDA, the Corporation will take up the work of detailing the VUDA road. Similar reply was given by the Town Development Officer in February, 1995 (Annexure "N") in response to the petitioner's representation. The petitioner continued to pursue the matter with the Corporation, but the Corporation through its Town Development Officer expressed their inability vide their letter dated 9.5.1995 (Annexure "P") to give the exact location of the road as the Government had still not sanctioned the revised plan submitted by VUDA. The Corporation, however, insisted that no construction is to be put up by the petitioner on the lands in question. Ultimately, the plan showing the location of the 30 Mtrs. VUDA road was prepared by the Corporation only in January, 1997 (as stated in the affidavit in rejoinder dated 8.5.1998).

2.6 In the meantime, the Competent Authority served the petitioner with the notice dated 23.5.1995 (Annexure "R") calling upon the petitioner to show why the permission under Section 21 (1) should not be cancelled because the petitioner had committed breach of condition No. 1(a) of the order dated 16.4.1990 requiring the petitioner to complete the construction by 16.4.1995. The notice also mentioned that the hearing was fixed on 31.5.1995. According to the petitioner, the notice was received by him on 30.5.1995 and, therefore, he filed his reply (Annexure "S") on the date of hearing i.e. 31.5.1995 pointing out the aforesaid developments which were beyond the petitioner's control (causing the delay in question). Ultimately, the Competent Authority passed the order dated 1.6.1995 cancelling the scheme under

Section 21(1). On the same day, the Competent Authority also passed a further consequential order dated 1.6.1995 (Annexure "C") restraining the petitioner from making any further construction.

2.7 The petitioner challenged the aforesaid order of the Competent Authority before the Urban Land Tribunal. The Tribunal ultimately dismissed the appeal on 25.8.1995 as per the order at Annexure "A". In the meantime, on account of cancellation of permission under Section 21(1), the Competent Authority proceeded to dispose of Form No. I declaring the entire land as excess vacant land which again came to be challenged and by the order dated 25.8.1995, the Tribunal partly allowed that appeal and remanded the matter to the Competent Authority.

2.8 The present petition, therefore, challenges the aforesaid order of the Tribunal dismissing the petitioner's appeal against the order of the Competent Authority cancelling the permission under Section 21(1) of the Act.

3. In response to the notice issued by this Court, affidavit in reply has been filed by the Competent Authority, Vadodara and the affidavit in rejoinder is also filed by the petitioner.

4. At the hearing of this petition, Mr M.J. Thakore, learned counsel for the petitioner has raised the following contentions:-

(i) The time limit specified in condition No. 1(a) for completion of construction was not absolute. The condition itself provided that the construction was required to be commenced within one year and completed within five years from the date of sanction of the scheme unless the landholder would satisfy the authority that the delay was caused by reasons beyond the control of the landholder. The injunction was granted by the Baroda Municipal Corporation on account of proposed variation in the development plan and the location of the 30 Mtrs. wide road was beyond the petitioner's control and therefore, there was sufficient cause for the petitioner not completing the construction within the stipulated time limit.

(ii) While the show cause notice dated 23.5.1995 (Annexure "R") only refer to alleged breach of condition No. 1(a) i.e. non-completion of the

construction within five years, the final order passed by the Competent Authority on 1.6.1995 (Annexure "B") has cancelled the permission on other grounds over and above the ground pertaining to non-completion of the construction within the time limit. The petitioner had no opportunity to show cause in respect of the alleged breach of other conditions.

(iii) In any view of the matter, the time given by the Competent Authority was too short. The petitioner received the notice on 30.5.1995, but the hearing was fixed on 31.5.1995 and, therefore, also the petitioner did not have sufficient opportunity to show cause to the authority and, therefore, also there was breach of the principle of natural justice.

5. On the other hand, Mr Sompura, learned AGP appearing for the respondents submitted that the exemption order dated 16.4.1990 had set out in details all the necessary conditions to attain the object underlying the provisions of the Act and, therefore, on account of breach of the said conditions, the Competent Authority was justified in cancelling the permission. All the conditions stipulated by the said order were mandatory in nature and, therefore, the impugned orders are legal and valid.

6. Having heard the learned counsel for the petitioner, it appears to the Court that there is considerable substance in the grievance made on behalf of the petitioner. After the Competent Authority sanctioned the scheme on 16.4.1990, the Collector granted N.A. permission on 8.10.1990 and the Baroda Municipal Corporation sanctioned the building plans on 24.7.1991 and 25.7.1991. There is no dispute about the fact that the petitioner had commenced construction of the dwelling units. It, therefore, appears that although there was some delay in commencement of construction by a few months, the delay in commencement of construction was not such which would entail cancellation of the permission. Even the Competent Authority has not passed the order on that basis.

As far as the delay in completion of construction is concerned, in view of the injunction granted by Baroda Municipal Corporation through its Town Development Officer on 2.1.1993 (Annexure "I") which continued right till the date of passing of the impugned order by the Competent Authority as well as by the Tribunal and even

thereafter it cannot be said that the petitioner was responsible for the delay in completion of construction for reasons within his control. The petitioner's representations dated 19.2.1994 (Annexure "J"), 22.2.1994 and 25.8.1994 (Annexure "K" colly.) and the fact that the petitioner was pursuing the matter with the Competent Authority as reflected in the letters from the Corporation (Annexures "L" & "P") clearly show that the petitioner was doing his best to get the injunction vacated. It is, therefore, clear that the reasons for the delay in completion of construction were beyond the petitioner's control. VUDA had proposed to the Government to change the location of the 30 Mtrs. wide road. Earlier, such road was passing East-West through the petitioner's land, but as per the revised plan the road is to pass North-South and, therefore, the petitioner will have to change the building plans in order to comply with the revised plans prepared by the VUDA. In fact, this revised location of the road was detailed only in January, 1997 and, therefore, for more than three years, the petitioner could not proceed with the construction. No reasonable person exercising the powers of the Competent Authority could have come to the conclusion that the delay in completion of construction was not on account of the reasons beyond the control of the petitioner. The order, in so far as the same proceeds on the footing that the permission as required to be cancelled on account of non-completion of the construction within five years from the date of the sanction of the scheme must, therefore, be treated as arbitrary and violative of the petitioner's rights under Articles 14, 300 A of the Constitution.

7. As far as the other grounds on which the permission has been cancelled by the Competent Authority through the said order, it is true that the grounds are not very minor, but it has to be noted that the show cause notice (Annexure "R") which was served upon the petitioner did not mention any such grounds other than the ground regarding non-completion of construction with the period of five years from the date of sanction of the scheme. The petitioner did not have a reasonable opportunity to show cause in respect of such grounds. The order, therefore, deserves to be quashed on the ground that the reasonable opportunity was not given to the petitioner to meet with the allegations which also appealed to the authority for passing the impugned order. However, quashing of the impugned orders would not mean that the authorities are restrained from issuing a fresh show cause notice to the petitioner in respect of the grounds which were not mentioned in the original show

cause notice dated 23.5.1995 at Annexure "R" to the petition. It will be open to the authorities to take any further appropriate action in accordance with law after giving the petitioner a show cause notice and after giving the petitioner a reasonable opportunity of being heard.

8. It is required to be noted at this stage that while admitting the petition and granting stay against operation of the order cancelling the scheme, this Court had imposed a condition that the petitioner shall deposit a tentative penalty at the rate of 5% of the total cost within eight weeks from 19.10.1995. The petitioner was also directed to maintain status quo with respect to the subject matter of the petition and there was also injunction against transfer of the lands in question.

9. Mr Sompura, learned AGP has submitted that since the present petition is being disposed of, the aforesaid amount should not be permitted to be withdrawn by the petitioner, but the same should be made over to the Government as the petitioner is not exonerated of all the allegations on merits, but only on the ground that except one ground the other grounds were not mentioned in the notice dated 23.5.1995. Mr. Sompura further submitted that in two decisions of this Court i.e. 36(1) GLR 742 and 1994 (1) GCD 526, this Court itself has passed orders imposing penalty on the landholder for committing breach of the conditions to complete the construction within the stipulated time limit and, therefore, such order should be passed in the present petition also.

10. Since it has been found that there was sufficient cause for the delay in completion of construction, the order of penalty cannot be levied. This Court would not impose penalty on the petitioner for non-completion of construction within five years, but this Court would still impose a condition that the petitioner shall complete the construction of all the dwelling units as per the scheme sanctioned by the order dated 16.4.1990 within two years and four months from the date on which the petitioner's application/s for revised scheme/s is/are sanctioned by the Competent Authority and the petitioner's applications for permission for revised building plans are sanctioned by the Baroda Municipal Corporation. This time limit is, however, stipulated on the basis that the petitioner makes the necessary applications to the aforesaid authorities within one month from today. This extension shall also not prejudice the power of the authorities to initiate appropriate proceedings and take action for breach of any

other condition of the order dated 16.4.1990 in accordance with law.

11. As far as the amount of Rs. 5,64,396/- deposited on 14.12.1996 in this Court is concerned, since the liberty has been reserved to the respondents to initiate fresh proceedings in accordance with law, it would be just and proper to direct that the amount shall remain with the Registry of this Court with a direction to invest the same in Fixed Deposit Account with cumulative interest for a period of six months and ultimately disposal of the said amount shall abide by any further directions which may be given by this Court on any application which may be filed by either of the parties, which may be made after six months from today.

12. Rule is made absolute to the aforesaid extent with no order as to costs.

Writ to be sent down to the respondents forthwith.

Sd/-

July 2, 1998 (M.S. Shah, J.)